

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

SHARINA SCOTT

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:03cv213WJG-RHW

COMMISSIONER OF SOCIAL SECURITY

DEFENDANT

O R D E R

THIS MATTER is before the Court on Plaintiff's motion [23] to remand. In her Motion, Plaintiff argues that on January 3, 2004, this Court ordered the case remanded and that if the entire administrative record could not be reconstituted within 90 days, the case should be remanded to the Administrative Law Judge [ALJ] for reconstruction of the record and to hold a new hearing. Plaintiff asserts that the record was not located and reconstituted within 90 days of remand; therefore, the matter should be remanded to the ALJ for a hearing.

In adopting the magistrate judge's Report and Recommendation of August 24, 2006, (Ct. R., Doc. 19.), the Court concluded that Plaintiff's complaint was untimely; therefore, the Court finds the issue of whether the Social Security Administration fulfilled the directives of the January 3, 2004, remand order is irrelevant. Regardless, the administrative record was located and made a part of the transcript that was certified on August 30, 2004. Although the 90-day time frame was not met, the Social Security Administration reconstructed the file, thereby obviating any need to remand the matter to the ALJ. The Court finds the record is complete and would be ready for review by this Court but for the fact that the complaint was untimely. It is therefore,

ORDERED AND ADJUDGED that the Plaintiff's motion [23] to remand be, and is hereby, denied.

SO ORDERED AND ADJUDGED this the 27th day of September, 2006.

Walter J. Gex III
UNITED STATES SENIOR DISTRICT JUDGE